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Paper No. 8

Silverbrook Research PTY LTD
393 Darling Street
Balmain, 2041
Australia

COPY MAILED

APR 26 2004

OFFICE OF PETITIONS

In re Application of :
Kia Silverbrook :
Application No. 09/854,703 :
Filed: May 14, 2001 :
Attorney Docket No. YU106US :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed December 17, 2003, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(c). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03(c)(III)(C) and (D). The instant petition lacks item (1) above.

Petitioner has not submitted the complete filing fee as required in the Notice to File Missing Parts (Notice) mailed July 3, 2001 and the Notice of Incomplete Reply mailed December 5, 2001.

In the instant petition, it is stated, "The Applicants are also confused by the request for late filing fee or oath or declaration surcharge requested in the second point of the Notice of Missing Parts, as the Declaration was submitted at the time of the original filing of the application." Petitioner is correct in that the Declaration was submitted at the time the application was filed. However, the filing fee was deficient. Accordingly, a surcharge is required when there is an insufficient filing fee ("a **late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(e)...must be submitted**").

It is noted that the Notice required an additional \$10 to complete the small entity filing fee and \$65 for the small entity late filing fee surcharge. However, petitioner has stated that the application does not, in fact, qualify for small entity status. It is also noted that the an attempt to charge the filing fee to petitioner's credit card was made upon the filing of the application, but it was declined by the credit card company. Therefore, the application was considered as having no filing fee present. In view thereof, the \$345 filing fee was **not** processed. Since the application qualifies as a large entity, the filing fee required is \$770, the late filing fee surcharge is \$130, and the unintentional petition fee is \$1330, which sums up to \$2,230. Petitioner has tendered a check in the amount of \$1440. Accordingly, petitioner owes a balance of \$790. The application cannot be revived until all required fees have been paid. A schedule of USPTO Fees is attached herewith for petitioner's use.

Further correspondence with respect to this matter should be addressed as follows:

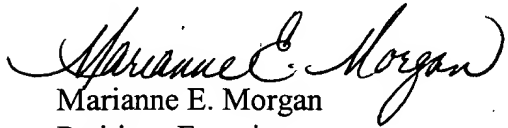
By Mail: Mail Stop PETITION
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The centralized facsimile number is **(703) 872-9306**.

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 306-3475.

A handwritten signature in cursive script, reading "Marianne E. Morgan".

Marianne E. Morgan

Petitions Examiner

Office of Petitions

Office of the Deputy Commissioner
for Patent Examination Policy

Attachment: Schedule of USPTO Fees Effective October 1, 2003